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असाधारण

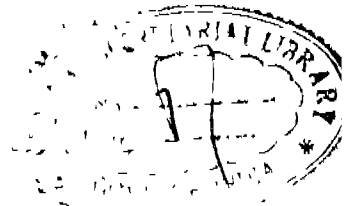
EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 3rd February, 1977/Magha 14, 1898 (Saka)

THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS (AMENDMENT) ORDINANCE, 1977

No. 3 OF 1977

Promulgated by the President in the Twenty-eighth Year of the Republic of India.

An Ordinance further to amend the Presidential and Vice-Presidential Elections Act, 1952.

WHEREAS the House of the People has been dissolved and the Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. (1) This Ordinance may be called the Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1977

(2) It shall come into force at once.

2 During the period of operation of this Ordinance, the Presidential and Vice-Presidential Elections Act, 1952 (hereinafter referred to as the

Short title and commencement.

Act 31 of 1952 to be temporarily amended

principal Act) shall have effect subject to the amendments specified in sections 3 and 4

Substitu-
tion of
new Part
for Part
III.

3. In the principal Act, for Part III, the following Part shall be substituted, namely:—

‘PART III
CHAPTER I
PRELIMINARY

Defini-
tions.

13 In this Part, unless the context otherwise requires,—

(a) “candidate” means a person who has been or claims to have been duly nominated as a candidate at an election;

(b) “costs” means all costs, charges and expenses of, or incidental to, a trial of a petition under this Part;

(c) “Council” means a Council convened under section 15 for the trial of a petition;

(d) “petition” means a petition calling in question an election;

(e) “returned candidate” means a candidate whose name has been published under section 12 as duly elected

CHAPTER II

COUNCILS FOR DISPUTED ELECTIONS

Petitions
in respect
of disputed
elections.

14. No election shall be called in question except by a petition presented in accordance with the provisions of this Part.

Authority
to try a
petition

15 (1) Every petition shall be tried by a Council convened for the purpose by notification in the Official Gazette by the Election Commission

(2) The Council shall consist of the following members, namely:—

(a) three members nominated by the Speaker of whom one shall be the Chief Justice, or a retired Chief Justice, of the Supreme Court of India and another a person who, in the opinion of the Speaker, has knowledge of election laws;

(b) three members elected by the members of the House of the People from amongst themselves; and

(c) three members elected by the members of the Council of States from amongst themselves.

(3) The Chairman and the Vice-Chairman of the Council shall be appointed by the Speaker from amongst the members thereof

(4) The Chairman, Vice-Chairman and other members of a Council shall hold office as such until the disposal by the Council of the petition for the trial of which it has been convened

Provided that—

(a) the Chairman, Vice-Chairman or any other member may by writing under his hand addressed to the President resign his office;

(b) a member elected by a House of Parliament shall cease to hold office as such upon his ceasing to be a member of that House.

(5) Any casual vacancy in the office of the Chairman or Vice-Chairman or any other member of the Council shall be filled in accordance with the provisions of sub-section (2).

(6) The conditions of service of the Chairman, Vice-Chairman and other members of a Council shall be such as may be prescribed.

16. If, during the course of the trial of a petition, any member of the Council trying the petition is absent or is for any reason unable to perform his functions or has relinquished his membership or has died, the remaining members of the Council may continue the trial of the petition:

Council to exercise functions notwithstanding vacancies.

Provided that the total number of members of the Council holding the trial is not less than five

17. When any person nominated or, as the case may be, elected to fill a casual vacancy in a Council trying a petition joins the Council, the trial of the petition shall be continued thereafter as if the member so nominated or elected had been a member of the Council from the commencement of the trial of such petition:

Fresh trial not necessary upon filling up of a casual vacancy in the Council

Provided that the Council may, if it thinks fit, recall and re-examine any of the witnesses already examined.

18. No act, proceeding, order or decision of a Council shall be invalidated merely by reason of any irregularity in the procedure of the Council not affecting the merits of the case.

Acts or proceedings of a Council not to be invalidated.

CHAPTER III

PRESENTATION OF PETITIONS IN RESPECT OF DISPUTED ELECTIONS

19. (1) A petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 32 to the Election Commission by any candidate at such election, or—

Presentation of petition.

(i) in the case of a Presidential election, by twenty or more electors joined together as petitioners;

(ii) in the case of a Vice-Presidential election, by ten or more electors joined together as petitioners.

Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the petition relates, whether he has voted at such election or not.

(2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12 but not later than thirty days from the date of such publication.

(3) A petition shall be deemed to have been presented to the Election Commission when it is delivered to the Election Commission or to such other officer as may be appointed by it in this behalf—

(i) by the person making the petition, or

(ii) by a person authorised in writing in this behalf by the person making the petition.

(4) Every petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and one more copy for the use of the Election Commission, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition

(5) At the time of presenting a petition the petitioner shall deposit with the Election Commission in such manner as may be prescribed a sum of two thousand rupees as security for costs.

(6) The Council trying a petition may at any time during the course of the trial of the petition call upon the petitioner to give such further security for costs as it may direct.

(7) No person shall be entitled to be joined as a respondent to a petition under sub-section (3) of section 24 unless he has given such security for costs as the Council may direct

Parties
to the
petition

20. A petitioner shall join as respondent to his petition the returned candidate.

Contents
of petition

21. (1) A petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) where the petitioner alleges that the corrupt practice of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate, shall set forth full particulars thereof, including as full a statement as possible, of the names of the parties alleged to have committed such corrupt practice and the date and place of commission thereof; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings. 5 of 1908.

Provided that where the petitioner makes any allegation that the corrupt practice of bribery or undue influence at the election has been committed as aforesaid, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

22 A petitioner may claim a declaration that the election of the returned candidate is void.

Relief that may be claimed by the petitioner.

23. (1) The Election Commission shall, as soon as may be, after the receipt of a petition under section 19, take such steps as may be prescribed for convening a Council for trying the petition.

Procedure on receiving petitions.

(2) Where more petitions than one have been received under section 19 in respect of the same election, a single Council shall be convened for the trial of such petitions and such Council may in its discretion try them separately or in one or more groups.

CHAPTER IV

TRIAL OF PETITIONS

24. (1) Subject to any rules made in this behalf, the Council for the trial of any petition shall hold the trial at New Delhi.

Trial of petitions

(2) The Council shall dismiss the petition,—

(a) if the petition has not been presented within the period specified in sub-section (2) of section 19;

(b) if the petition does not comply with the provisions of sub-section (4) or sub-section (5) of section 19 or section 20.

Explanation.—An order dismissing a petition under this sub-section shall be deemed to be an order made under clause (a) of section 30.

(3) Any candidate not already a respondent to a petition shall upon application made by him to the Council within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the Council be entitled to be joined as a respondent.

Explanation.—For the purposes of this sub-section, the trial of a petition shall be deemed to commence on the date fixed for the respondents to appear before the Council and answer the claim or claims made in the petition.

(4) The trial of a petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the Council finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(5) Every petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of commencement of the trial.

25. (1) The Chairman of the Council or in his absence the Vice-Chairman of the Council shall preside at the sittings of the Council.

Procedure

(2) Subject to the provisions of this Part and of any rules made under this Act, the Council shall regulate its own procedure for the trial of a petition

Evidence.

26. (1) Subject to the provisions of this section, for the purposes of trial of a petition the Council may require any person who in its opinion is able to furnish information or produce documents relevant to the trial to furnish any such information or produce any such document.

(2) For the purpose of any such trial, the Council shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed

(3) Any proceeding before the Council shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. 45 of 1860.

Secrecy of voting not to be infringed.

27. No witness or other person shall be required to state for whom he has voted at an election.

Answering of criminal questions and certificate of indemnity.

28. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of a petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture

Provided that—

(a) a witness, who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the Council; and

(b) an answer given by a witness to a question put by or before the Council shall not except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IXA of

the Indian Penal Code arising out of the matter to which such certificate relates. 45 of 1860.

29. The reasonable expenses incurred by any person in attending to give evidence before the Council may be allowed by it to such person, and shall, unless the Council otherwise directs, be deemed to be part of the costs. Expenses of witnesses

30. At the conclusion of the trial of a petition the Council shall make an order— Decision of the Council.

(a) dismissing the petition, or

(b) declaring the election of the returned candidate to be void.

31. At the time of making an order under section 30, the Council shall also make an order fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid. Order as to costs.

32. (1) If the Council is of opinion.—

(a) that the corrupt practice of bribery or undue influence at the election has been committed by the returned candidate or by any person with the consent of the returned candidate; or

(b) that the result of the election has been materially affected—

Grounds for declaring the election of a returned candidate to be void.

(i) by the improper reception or refusal of a vote; or

(ii) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act; or

(iii) by reason of the fact that the nomination of any candidate (other than the successful candidate), who has not withdrawn his candidature, has been wrongly accepted; or

(c) that the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted.

the Council shall declare the election of the returned candidate to be void.

(2) For the purposes of this section, the corrupt practice of bribery and undue influence at an election shall have the same meanings as in the Representation of the People Act, 1951.

'3 of 1951

33. If during the trial of a petition there is a difference of opinion among the members of the Council on any matter or if at the conclusion of the trial there is a difference of opinion among them regarding the orders to be made under section 30, or section 31, the opinion of the majority shall prevail and the orders of the Council shall be expressed in terms of the views of the majority:

Decision of Council to be in accordance with the view of majority.

Provided that where the members are equally divided on any matter or with regard to any order to be made, the matter shall be decided or, as the case may be, the order shall be made, in accordance with the views of the members who concur with the Chairman.

Transmi-
ssion of
orders to
the
Central
Govern-
ment
and its
publica-
tion.

34. The Council shall, after making its order under section 30, send a copy of that order to the Central Government, and on receipt of such copy the Central Government shall forthwith cause the order to be published in the Official Gazette.

Costs.

35. Costs shall be in the discretion of the Council:

Provided that where a petition is dismissed, under clause (a) of section 30, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the Council shall make an order for costs in favour of the returned candidate.

Orders
of
Council
to
be final.

36. No order made by a Council under this Part shall be called in question in any court.

Effect of
orders
of
Council

37. An order made by a Council under this Part shall take effect as soon as it is pronounced by the Council.

Withdra-
wal
and
abate-
ment
of
petitions

38. The provisions of section 109 to 116 (both inclusive) of the Representation of the People Act, 1951, relating to withdrawal and abatement of election petitions shall, so far as may be, apply in relation to withdrawal and abatement of petitions under this Part subject to the modifications that the references therein to an election petition, High Court and petitioner shall be construed as references to a petition under this Part, the Council for hearing such petition and the petitioner in respect of such petition, respectively.

43 of 1951.

Payment
of
costs
out of
security
deposits
and
return of
such
deposits.

39. (1) If in any order as to costs under the provisions of this Part, there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full or so far as possible, out of the security deposit and the further security deposit, if any, made by such party under this Part on an application made in writing in that behalf within a period of one year, from the date of such order to the Election Commission by the person in whose favour the costs have been awarded.

(2) If there is any balance left of any of the said security deposits after payment under sub-section (1) of the costs referred to in that sub-section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year, the whole of the said security deposits may, on an application made in that behalf in writing to the Election Commission by the person by whom the deposits have been made, or if

such person dies after making such deposits, by the legal representative of such person, be returned to the said person or to his legal representative, as the case may be

40. Any order as to costs under the provisions of this Part may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or where such place is within a Presidency town, before the court of small causes having jurisdiction there, and such court shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Execution
of orders
as to costs

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (1) of section 39, no application shall lie under this section within a period of one year from the date of such order unless it is for the recovery of the balance of any costs which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposits referred to in that sub-section '.

4 In Part IV of the principal Act—

Amend-
ment of
Part IV,

(i) section 20A shall be renumbered as section 41;

(ii) section 21 shall be renumbered as section 42 and in section 42 as so renumbered, in sub-section (2), for clause (j) the following clauses shall be substituted, namely:—

“(j) the steps to be taken for convening a Council and for filling of casual vacancies in a Council;

(k) the deposit or further deposit to be made by the petitioner as security for the costs;

(l) the procedure for the trial of a petition under this Act;

(m) the appointment of officers and other employees for assisting the Councils in the discharge of their functions and the conditions of service of such officers and other employees;

(n) the custody of deposits made under Part III, the payment of costs out of such deposits on an application made under section 39 and other matters relating to the disposal of such applications;

(o) the fees, if any, payable in respect of any petition or application under Part III;

(p) any other matter which has to be prescribed by or provided for by rules made under this Act.”.

(iii) section 22 shall be renumbered as section 43;

(iv) section 23 shall be renumbered as section 44, and in that section as so renumbered, the words and figures "Save as provided in Part III" shall be omitted.

FAKHRUDDIN ALI AHMED,
President.

K. K. SUNDARAM,
Secy. to the Govt. of India.